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3 **UNITED STATES DISTRICT COURT**4 **DISTRICT OF NEVADA**

5 James Ray Walker,

Case No.: 2:15-cv-01240-RFB-EJY

6 Petitioner

**ORDER**

7 v.

8 William Gittere, et al.,

9 Respondents  
10

11 In this habeas corpus proceeding under 28 U.S.C. § 2254, respondents have filed motion  
12 for compliance with Rule 2 and/or for a more definite statement in response to Walker's second  
13 amended petition (ECF No. 104). ECF No. 109. Respondents argue that the petition does not  
14 comply with the Habeas Rules or this court's prior order because it fails to specify when, where,  
15 and how Walker's grounds for relief have been exhausted in state court proceedings. Respondents  
16 ask the court to issue an order requiring Walker to file a corrected petition that includes a statement  
17 of exhaustion for each claim, identifying when and where he raised the claim and how the Nevada  
18 Supreme Court ruled on it.

19 Habeas Rule 2(d) of the Rules Governing Section 2254 Cases mandates that "a petition  
20 must substantially follow either the form appended to these rules or a form prescribed by local  
21 district-court rule." In accordance with the Habeas Rules, this court's Local Rules provide that "[a]  
22 petition for writ of habeas corpus under 28 U.S.C. § 2254 must be on the form supplied by the  
23 court or must be legible and substantially follow either that form or the form appended to the

1 [Habeas] Rules.”). *See* LSR 3-1, Local Rules of Practice. The form requirement allows for more  
2 efficient adjudication of habeas petitions and “is particularly helpful in getting information about  
3 whether there has been an exhaustion of state remedies or, at least, where that information can be  
4 obtained.” Advisory Committee Notes to Habeas Rule 2.

5 Both the form appended to the Habeas Rules and this court’s form contain a section after  
6 each claim requiring the petitioner to identify whether he or she raised the claim on direct appeal,  
7 a post-conviction proceeding, or any other proceeding. In addition, this court’s scheduling order  
8 provided that “[t]he second amended petition must specifically state whether each ground for relief  
9 has been exhausted in state court; for each claim that has been exhausted in state court, the second  
10 amended petition must state how, when, and where that occurred.” ECF No. 98 at 2. The order  
11 informed Walker that “[t]his information is needed to determine whether there has been complete  
12 exhaustion.” *Id.*

13 Respondents argue that Walker’s second amended petition does not contain sufficient  
14 exhaustion information because it merely states that all claims in the petition have been exhausted  
15 in state court proceedings during direct appeal, initial postconviction proceedings, and/or  
16 subsequent postconviction proceedings, ECF No. 109 at 2-3 (citing ECF No. 104 at 24). In  
17 response, Walker contends that, at the conclusion of every claim, there is a citation indicating the  
18 proceeding in which the claim was exhausted. ECF No. 112 at 2-8 (citing the location of each such  
19 citation in his second amended petition).

20 The vast majority of the citations to which Walker refers are to the decisions of the Nevada  
21 Supreme Court in one or more of his state proceedings. For the most part, these citations do not  
22 explain how the claim (or portions of the claim) was exhausted in a particular proceeding. As a  
23 result, the court and the respondents are left to guess which claims (or portions thereof) were

1 exhausted in which proceeding. As respondents note, Walker provided a much clearer “statement  
2 of exhaustion” when he filed his first amended petition. ECF No. 109 at 3 (citing ECF No. 40 at  
3 9-14). There, he provided a claim-by-claim explanation of exhaustion. The court sees no reason  
4 why Walker should not provide a similar statement with respect to his second amended petition.

5 IT IS THEREFORE ORDERED that respondents’ motion for compliance with Rule 2  
6 and/or for a more definite statement (ECF No. 109) is GRANTED. Within 30 days of the date this  
7 order is entered, Walker shall file a statement of exhaustion for his second amended petition (ECF  
8 No. 104) that is similar to the statement he provided with this first amended petition (ECF No. 40  
9 at 9-14). Rather than file an amended or corrected petition, Walker may file this statement as an  
10 independent document.

11 IT IS FURTHER ORDERED that respondents will have 90 days following the filing of the  
12 statement to file an answer or other response to the second amended petition. In all other respects,  
13 the scheduling order entered May 6, 2021, (ECF No. 98) continues to govern these proceedings.

14 IT IS FURTHER ORDERED that respondents’ motion for extension of time (ECF No.  
15 114) is DENIED as moot.

16 Dated: July 28, 2022



U.S. District Judge Richard F. Boulware